



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XC428]

#### **Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Mayflower Wind Project offshore of Massachusetts**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application for regulations and Letter of Authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from Mayflower Wind, LLC (Mayflower Wind) for authorization to take small numbers of marine mammals incidental to the Mayflower Wind Project in a designated lease area on the Bureau of Ocean Energy Management's (BOEM) Lease Area Outer Continental Shelf (OCS)-A-0521 offshore of Massachusetts, over the course of 5 years beginning on April 1, 2025. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Mayflower Wind's request for the development and implementation of regulations governing the incidental taking of marine mammals and issuance of a 5-year Letter of Authorization (LOA). NMFS invites the public to provide information, suggestions, and comments on Mayflower Wind's application and request.

**DATES:** Comments and information must be received no later than *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

**ADDRESSES:** Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to *ITP.Esch@noaa.gov*.

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Carter Esch, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of Mayflower Wind's application may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. In case of problems accessing these documents, please email the contact listed above.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

In Executive Order 14008, President Biden stated that it is the policy of the United States to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.

## **Summary of Request**

On March 18, 2022, NMFS received an application from Mayflower Wind requesting authorization to take marine mammals incidental to construction activities associated with the Mayflower Wind Offshore Wind Project offshore of Massachusetts in the designated Lease Area OCS-A-0521. In response to our comments, and following extensive information exchange with NMFS, Mayflower Wind submitted a final, revised application on September 14, 2022, which we determined was adequate and complete on September 19, 2022. Mayflower Wind requested the regulations and subsequent LOA be valid for 5 years beginning on April 1, 2025.

Mayflower Wind plans to conduct wind farm construction activities, including impact and vibratory pile driving, cable installation, unexploded ordnances (UXO) detonation, and high-resolution geophysical (HRG) site characterization surveys to build and operate the Mayflower Wind Project. Vessel use and fishery surveys will also be necessary to support the project. The proposed action may incidentally expose marine mammals occurring in the vicinity to elevated levels of underwater noise during pile driving, UXO detonation, and HRG surveys, thereby resulting in incidental take, by Level A harassment and/or Level B harassment, of marine mammals. Therefore, Mayflower Wind requests authorization to incidentally take marine mammals.

### **Specified Activities**

Through a competitive leasing process under 30 CFR 585.211, Mayflower Wind was awarded Commercial Lease OCS-A 0521 offshore of Massachusetts and the exclusive right to submit a construction and operations plan (COP) for activities within the lease area. Mayflower Wind has submitted a COP to BOEM proposing the construction, operation, maintenance, and conceptual decommissioning of the Mayflower Wind Project, a 2,400 megawatt (MW) capacity commercial-scale offshore wind energy facility consisting of up to 147 wind turbines, up to five offshore sub-stations, and two export cable corridors making landfall in Falmouth and Somerset, Massachusetts.

Mayflower Wind anticipates the following activities may potentially result in harassment of marine mammals during the effective period of the requested regulations and associated LOA:

- Installing up to 147 WTG monopile foundations with a maximum diameter tapering from 9 meters (m; 30 feet (ft)) above the waterline to 16 m (39 ft) below the waterline (9/16-m monopile) using a vibratory hammer and 6,600 kJ impact hammer, or installing up to 588 pin piles with a 4.5-m maximum diameter to support up to 147 WTGs using a vibratory hammer and a 3,500 kJ impact hammer;
- Installing up to five 9/16-m diameter OSP monopile foundations using a 6,600 kJ impact hammer, or installing up to 135 pin piles with a 4.5-m maximum diameter to support five OSPs using a 3,500 kJ impact hammer;
- Using HRG equipment to survey approximately 27,000 kilometers (km) (16,777 miles (mi)) over 338 days across all 5 years (2025–2030);
- Detonating up to 10 UXOs over the course of 5 years with no more than 1 UXO detonation occurring on any given day.

### **Information Solicited**

Interested persons may submit information, suggestions, and comments concerning Mayflower Wind's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Mayflower Wind, if appropriate.

**Dated:** October 11, 2022.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

